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9 UNITED STATES DISTRICT COURT
10 WESTERN DISTRICT OF WASHINGTON
11 AT TACOMA

12 TERRY L. LAVERY, JR.,

13 Plaintiff,

14 v.

15 M. KRONA, and EDWARD HANSMEYER,

16 Defendants.
17

CASE NO. C09-5196FDB

REPORT AND
RECOMMENDATION TO DENY
PLAINTIFF'S MOTION FOR AN
INJUNCTION OR TEMPORARY
RESTRAINING ORDER

NOTED FOR: June 26, 2009

18 This 42 U.S.C. § 1983 Civil Rights action has been referred to the undersigned
19 Magistrate Judge pursuant to Title 28 U.S.C. §§ 636(b)(1)(A) and 636(b)(1)(B) and Local
20 Magistrate Judges' Rules MJR 1, MJR 3, and MJR 4. Plaintiff is proceeding *in forma*
21 *pauperis* (Dkt. # 6). Before the court is plaintiff's motion asking for an "injunction" or
22 "temporary restraining order." (Dkt. # 9). Plaintiff asks the court to order "John Thompson"
23 to appear and show cause why an injunction should not be issued requiring the defendants
24 and all persons acting in concert with them to provide the plaintiff with legal supplies and
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1 forms he requests (Dkt. # 9). John Thompson is not a named defendant in this action (Dkt. #
2 7).

3 In the complaint plaintiff alleges he placed two orders for “vendor books” to an art
4 supplier. He alleges that the items arrived at the mailroom, were signed for by mail room
5 staff, but not delivered to him (Dkt. # 7). Thus, the issues in the complaint and the motion
6 for injunctive relief are unrelated.
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8 STANDARD OF REVIEW

9 The basic function of injunctive relief is to preserve the *status quo ante litem* pending a
10 determination of the action on the merits. Los Angeles Memorial Coliseum Com'n v. National
11 Football League, 634 F.2d 1197, 1200 (9th Cir. 1980). A party seeking injunctive relief must
12 fulfill one of two standards, the "traditional" or the "alternative." Cassim v. Bowen, 824 F.2d
13 791, 795 (9th Cir. 1987).
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15 Under the traditional standard, a court may issue preliminary relief if it finds that (1)
16 the moving party will suffer irreparable injury if the relief is denied; (2) the moving
17 party will probably prevail on the merits; (3) the balance of potential harm favors the
18 moving party; and (4) the public interest favors granting relief. . . . Under the
19 alternative standard, the moving party may meet its burden by demonstrating either
20 (1) a combination of probable success and the possibility of irreparable injury or (2)
21 that serious questions are raised and the balance of hardships tips sharply in its favor.

22 Id. (citations omitted).

23 DISCUSSION

24 To obtain an injunction, Plaintiff must have a party before the court whom an injunction
25 can be entered against. Here, plaintiff does not allege either defendant Krona or defendant
26 Hansmeyer have engaged in any activity that warrants an injunction. The person he seeks an
injunction against, John Thompson, is not a named defendant in this action. Further, plaintiff

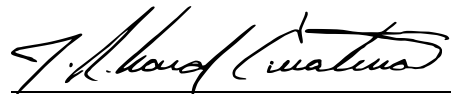
1 fulfills neither standard and fails to show any actual injury to his litigation or that he has or
2 will suffer irreparable injury. Accordingly, the court recommends this motion be DENIED.

3 CONCLUSION

4 Plaintiff has not set evidence before the court showing that he meets the criteria for any
5 form of injunctive relief. Further, he does not have the proper party before the court for the
6 relief he is seeking. The Court therefore recommends the motion for injunctive relief be
7 DENIED.
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9 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil
10 Procedure, the parties shall have ten (10) days from service of this Report to file written
11 objections. *See also*, Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of
12 those objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985).
13 Accommodating the time limit imposed by Rule 72(b), the clerk is directed to set the matter
14 for consideration on **June 26, 2009**, as noted in the caption.
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16 DATED this 3rd day of June, 2009.

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19 J. Richard Creatura
20 United States Magistrate Judge
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